IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

O R D E R

1. Sayed Noman Ahmed Vs. Ramkishore

S.B. CIVIL REVISION PETITION No. 1483/1998 against order dated 15.10.1998 passed by the Civil Judge (Lower Division), Sikar in Execution Case No.14/1994.

2. Sayed Noman Ahmed Vs. Ramkishore

S.B. CIVIL REVISION PETITION No. 1484/1998 against order dated 15.10.1998 passed by the Civil Judge (Lower Division), Sikar in Execution Case No.162/1998.

3. Sayed Noman Ahmed Vs. Ramkishore

S.B. CIVIL REVISION PETITION No. 248/1999 against order dated 2.2.1999 passed by the Civil Judge (Lower Division), Sikar in Execution Petition No.14/1994.

4. Sayed Noman Ahmed Vs. Ramkishore

S.B. CIVIL REVISION PETITION No. 1485/1998 against order dated 15.10.1998 passed by the Civil Judge (Lower Division), Sikar in Execution Case No.163/1998.

Date of Order :: May 07, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. S.R. Surana with
Mr. Ramavatar Sharma &
Mr. Deepak Lata for the petitioner.
Mr. R.K. Mathur for the respondent.

REPORTABLE BY THE COURT:

1. The real litigation starts after the decree, is a saying in the legal circles which explains the pain of the decree holder in the execution of the decree. Long periods, repetitive and unsustainable objections and delay in judicial process itself adds insult to the injury and the decree holder even after winning the suit remains a loser. The present case is a glaring example of this phenomenon.

2. The plaintiff decree holder Ram Kishore adopted son of Shri Hanuman Bux holds a decree of eviction dated 13.9.1976 for seeking eviction of suit premises, a dilapidated portion of residential house most of which has been converted into land simply by rains and non maintenance and the said decree has not been executed even after two rounds of execution application and the matter reaching upto High Court in the meanwhile. The judgment debtor, the petitioner in the present revision petitions Mr. Sayed Noman Ahmed, an Advocate practising in Sikar is the objector in the execution application. The judgment debtor being a practising Advocate explains the part of the story which follows.

3. When the matter came up before this Court in earlier round of litigation in S.B. Civil Revision Petition

No.508/1981 at the instance of judgment debtor, this Court passed the following judgment on the concession of the petitioner judgment debtor that he is bound to deliver the possession of the suit premises which comprises of three rooms as described in the plaint and the rent note but since possession of some excess portion was also sought, this Court considered it appropriate to direct the Executing Court to pass a fresh order. It would be of interest to quote the relevant part of the judgment dated 1.7.1987 by the then Chief Justice (Hon'ble Mr. Justice J.S. Verma, C.J.):-

> "Learned counsel for the petitioner (judgment-debtor) conceded at the outset that the judgment-debtor is bound to deliver possession of the suit premises, which comprises of three rooms, as described in the plaint and the rent note, which have to be read alongwith the decree, and that the money due under the decree has also to be paid to the decree-holder. In other words, the petitioner (judgment-debtor) conceded that in addition to delivering possession of the suit premises as described in the plaint and the rent note, the judgment-debtor has to pay a further sum of Rs.350/- as the arrears of rent and mesne profits @ Rs.25/- per month from 25.11.72 upto the date of delivery of possession of the suit premises by the judgment-debtor to the decree holder. The only grievance made by the learned counsel for the petitioner is that the petitioner cannot be required to deliver possession of any premises in excess of that covered by the suit premises, or be required to pay

the mesne profits for any period after delivery of possession of the suit premises by the judgment-debtor to the decree-holder. On the other hand, learned counsel for the respondents states that neither the suit premises have been delivered by the judgment-debtor to the decree-holder, nor has any payment been made under the decree. In view of the clear concession made on behalf of the petitioner (judgment-debtor) there is now no controversy surviving for decision in this revision.

In is obvious that the decree can be executed only for recovery of possession of the suit premises in respect of which the decree has been passed and the amount of Rs.350/- decreed as arrears of rent together with mesne profits @ Rs.25/- per month due from 25.11.72 till the delivery of possession has to be paid by the judgment-debtor (petitioner) to the respondents in addition to the costs which have been decreed. Obviously, the executing court misconstrued the decree in directing delivery of possession of the premises in excess of the suit premises merely on the conclusion that the judgment-debtor was in possession of the same. A direction for delivery of possession of any premises in excess of the suit premises cannot, therefore, be sustained. In view of the controversy about delivery of possession of the suit premises and payment of the money due under the decree, it would be appropriate to direct the executing court to pass a fresh order with advertence to the above observations.

Consequently, the revision is allowed, and the impugned order dated 5.9.81 passed by the executing court is set aside. The executing court shall decide the execution application afresh in the above

manner.

In the circumstances of the case, the parties shall bear their own costs.

Sd/-
J.S. Verma, C.J.”

4. After the said judgment the decree holder again approached the executing court in the execution application already filed on 5.10.1978 under Order 21 Rule 11 CPC, in column No.10 of the application in the prescribed form the execution application clearly explained the boundaries of the suit premises as “the house situated in ward No.23 (old), new ward No.32 on the west of the said house is the public way, on the east is the Gordhan Banarsi Tawaif, on the north house of Mangej Singh Rajput and on the south house of Sheo Bux Mali. Thus, the boundaries of the suit premises are defined by the boundaries of other neighbours and on the one side the public way. The plaint itself described in para 1 & 2 of the plaint the suit premises by these boundaries and except a bald denial in the written statement of not admitting the contents of these paras, the defendant never came out with details in his written statement as to the incorrectness of the boundaries so specified nor did he on his own specify as to what was given to him on rent as a tenant.

5. That apart when the aforesaid portion of judgment of this Court was read out by the learned counsel for the petitioner Mr. S.R. Surana, two specific questions were put to him by the Court (1) as to whether the possession of the admitted portion of the decree which he conceded before the Court to hand over the possession to the decree holder has been handed over or not and (2) what according to him is the excess portion of which he is not liable to give the possession and whether he can specify the same. Learned counsel for the petitioner gave negative answers to both the questions. The possession of the portion which was conceded to be given has not been given since 1987 even after lapse of 20 years and the learned counsel was also unable to specify as to what excess portion is in his possession which the decree holder is seeking from him under the said decree.

6. The only argument raised by the learned counsel for the petitioner Mr. Surana was that the measurement of the suit premises was not specified and, therefore, the decree was not workable and not executable and secondly that the learned trial court before passing the impugned order allowing the execution application could not have got the suit premises measured and map prepared by Sale Amin before allowing the execution application.

7. As against this, Mr. R.K. Mathur, learned counsel appearing for the respondent decree holder submitted that it is indeed unfortunate that a decree of 1976 has remained unexecuted for so long and despite concession of the judgment debtor even before this Court in 1987, no portion of the suit premises has been handed over to the decree holder as yet. He further pointed out that on the other hand the judgment debtor has filed applications on more than one occasion before the learned executing court that he has no objection to hand over the possession of the vacant land over which the constructed part had fallen due to rains to the decree holder. He produced before this Court a certified copy of the application dated 23.5.1992 signed by the judgment debtor Mr. Sayed Noman Ahmed, Advocate, Sikar and he submitted that more than one such application were filed before the court although the judgment debtor had no intention to hand over the possession either of the vacant land or the three rooms as conceded before this Court way back in 1987. He further submitted that nor mesne profits or arrears of rent has been paid by the judgment debtor.

8. Mr. R.K. Mathur, learned counsel further pointed out that not only the present petitioner judgment debtor has raised wholly unsustainable objections before the Executing court but he intended to encroach upon the other portions of the suit property and raise his own new

construction thereon and, therefore, seeking to restrain him and also to claim mesne profits and eviction from the whole of the premises the plaintiff decree holder has filed another suit namely Suit No.11/2004 which has also been decreed in his favour by the learned trial court on 5.2.2005 but against that order also an appeal has been filed by the judgment debtor in this Court namely S.B.C.F.A. No.162/2005 which has also been admitted by this Court on 4.4.2005 and a stay order has also been granted by this Court on 4.4.2005 staying the operation of that judgment and decree dated 5.2.2005 in Civil Suit No.11/2004. Therefore, he submitted that the judgment debtor may also not allow the execution of this decree to take place which has been delayed during the pendency of these revision petitions for more than 8 years because there was a stay order granted in these revision petitions also in favour of the petitioner, in view of the said pendency of another First Appeal No.162/2005 in which stay order against subsequent decree has also been obtained by him. He, thus, submitted that petitioner somehow wants to retain the possession of the suit premises under one pretext or the other and has not allowed the execution of the decree so far.

9. In these four revision petitions, four different orders of the executing court have been assailed by the petitioner.

10. In revision petition No.1483/1998, the impugned order dated 15.10.1998 has been challenged by which the Executing court has directed while holding that the decree was executable and workable that the judgment debtor may hand over the possession of the vacant land measuring 28'x9" in length and 14'x6" in width and one room situated on the southern side in the said chowk, the door of which opens in the west side be also handed over to the decree holder.

11. In revision petition No.1484/1998 by the impugned order dated 15.10.1998, the court while holding that Ram Kishore was brought on record as LR of Hanuman Bux vide order dated 4.5.1987 and, therefore, the objection that he was not adopted son of the decree holder Hanuman Bux was not sustainable and the decree was thus held to be workable.

12. In revision petition No.1485/1998 by the impugned order dated 15.10.1998 the Executing court held that two rooms which were covered by the tin shed had fallen due to rains and on that place only the vacant land measuring 28'X9" and 14'x6" was there and, therefore, the possession of the vacant land itself may be handed over to the decree holder.

13. In revision petition No.248/1999 the order impugned is passed on 2.2.1999 wherein after considering the previous order passed by the court on 15.10.1998 and partly allowing the application filed by the objector petitioner U/s.151 CPC read with Section 153 CPC modified the order dated 15.10.1998 and the possession of the ground between boundary of Mangej Singh measuring 14'X9" on the northern and southern side and on the eastern and western side the length upto the wall of tin shedded rooms was ordered to be given which was 28.9" in length. The order as to payment of mesne profit etc. passed in the earlier orders dated 15.10.1998 was maintained. Even this order was challenged in the aforesaid revision petition No.248/1999.

14. Having heard the learned counsels at length and after perusing the record of the case, this Court strongly feels that the judgment debtor petitioner is not entitled to any protection from this Court and the present revision petitions are thoroughly misconceived and deserve to be dismissed with exemplary costs. The reasons are as follows.

15. The objections raised by the learned counsel for the petitioner that the measurement and boundaries of the suit premises were not specified and, therefore, the decree was unexecutable and unworkable is wholly

misconceived. The learned trial court got the said site measured and got the map prepared through Sale Amin which exercise cannot be said to be illegal or wrong in any manner in view of the objection raised by the judgment debtor himself. Once the demarcated limits which were even otherwise specified in the suit and never any objection was raised in the written statement or during the course of evidence was clear enough but the dispute now sought to be raised in the execution proceedings were just raised for the sake of it. The said contention is, therefore rejected and the learned court below has rightly rejected such objection. The other objection as to adoption of Ram Kishore by Hanuman Bux is concerned, the said objection is also untenable because on the application of judgment debtor himself the said LR was brought on record way back in 1987 and never any objection was raised to this effect during the course of suit proceedings. Therefore, such objection cannot be entertained in execution proceedings. The said objection was also, therefore, rightly rejected by the Executing court.

16. The very fact that the judgment debtor petitioner himself gave a voluntary concession before this Court at the time of decision of earlier revision petition No.508/1981 filed by him which was disposed of on 1.7.1987 and later non compliance with his own concession

reflects very badly on the conduct of the judgment debtor, the present petitioner. He virtually successfully misled this Court by extending that concession and making it to appear as if some excess possession was being sought under the decree which was in fact not, therefore, he pursuaded the Court to set aside the earlier impugned order dated 5.9.1981 to decide the execution application afresh. In the process he successfully avoided giving back the possession despite his concession before the Court for 20 good years and he obtained a stay order from this Court in these revision petitions possibly without referring to the said concession made before this Court on 1.7.1987. The conduct of the petitioner judgment debtor is further reflected in filing another appeal against a subsequent decree and judgment of the learned trial court dated 5.2.2005 in filing the Civil First Appeal No.162/2005 and again obtaining a stay order on 4.4.2005, purportedly to seek a cover under the said stay order and not to hand over the possession of the suit premises even if these four revision petitions come to be dismissed by this Court.

17. In view of the aforesaid, these revision petitions are dismissed with costs of Rs.2500/- for each petition and petitioner judgment debtor is directed to hand over the vacant and peaceful possession of the suit premises, the vacant land measuring 28'X9" and 14'x9" as specified

in the order dated 2.2.1999 of the learned trial court within a period of four weeks from today. The petitioner judgment debtor will further pay entire arrears of mesne profits as directed by the learned trial court within the aforesaid period of four weeks. Both these compliances shall be made notwithstanding the stay order dated 4.4.2005 or any subsequent order in S.B. Civil First Appeal No.162/2005 filed by the petitioner in this Court. The respondent decree holder is also at liberty to move for vacation of that stay order dated 4.4.2005 in case any objection is raised by the petitioner seeking protection of that stay order during the execution proceedings and against the compliance of the aforesaid directions given above. In case the petitioner fails to hand over the possession as aforesaid and clear the arrears of mesne profits and cost awarded above within a period of four weeks from today, the mesne profits shall stand enhanced to Rs.5,000/- per month to be paid by the petitioner to the respondent decree holder in respect of the suit premises commencing from 1st July, 2007.

18. The revision petitions are accordingly dismissed with costs as aforesaid.

(Dr.VINEET KOTHARI),J.

VS/